DAVID A. ROSENFELD, Bar No. 058163
WEINBERG, ROGER & ROSENFELD
A Professional Corporation
1001 Marina Village Parkway, Suite 200
Alameda, California 94501
Telephone (510) 337-1001
Fax (510) 337-1023
E-Mail: drosenfeld@unioncounsel.net

SHEILA SEXTON, Bar No. 197608
BEESON, TAYER & BODINE
483 9th Street, 2nd Floor
Oakland, CA 94607
Telephone: (510) 625-9700
Fax: (510) 625-8275
E-Mail: ssexton@beesontayer.com

Attorneys for Petitioner PACIFIC MEDIA WORKERS GUILD, LOCAL 39521, THE NEWSPAPER GUILD, COMMUNICATION WORKERS OF AMERICA, AFL-CIO

UNITED STATES OF AMERICA

NATIONAL LABOR RELATIONS BOARD

PURPLE COMMUNICATIONS, INC. AND ITS SUCCESSOR AND JOINT EMPLOYER CSDVRS, LLC d/b/a ZVRS, Respondent, and PACIFIC MEDIA WORKERS GUILD, LOCAL 39521, THE NEWSPAPER GUILD, COMMUNICATION WORKERS OF AMERICA, AFL-CIO, Petitioner.	Cases 21-CA-149635, 28-CA-179794, 21-CA-182016, 32-CA-185337, 21-CA-185343, 27-CA-185377, 27-CA-186448, 28-CA-186509, 21-CA-187642, 28-CA-192041, 27-CA-192084, 28-CA-197009 27-CA-197062 **ANSWERING BRIEF TO CROSS-EXCEPTIONS OF GENERAL COUNSEL**

The Charging Party supports the Cross-Exceptions of the General Counsel, with the following comments and criticisms.

First, the General Counsel's Cross-Exceptions ignore the fact that there was a wide-spread pattern of deliberate, intentional and serious violations of the Act. The conduct that is the subject of the General Counsel's Cross-Exceptions 1 through 4 must be understood in the context of the wide-spread unfair labor practices. Most of the violations found by the Administrative Law Judge haven't even been challenged. Employees would have viewed that conduct encompassed in Cross-Exceptions 1 through 4 as part of the overall scheme to defeat the Section 7 rights of employees. Given the animus found by the ALJ and the context, Cross-Exceptions 1-4 should be granted.

Second, Cross-Exception 5 requests that one person read the Notice to employees. We believe it should be a high-ranking official of the company, probably the chief executive officer or whatever title she or he has. Furthermore, we submit that that reading should be done in the presence of a Union official and that the Union be allowed to video record the reading for broadcasting and distribution. We believe the Board should be allowed to videotape it. The video recording should also be posted on the company's intranet and internet so the public can view it. The remedy should not be in the alternative to allow a Board Agent to read the Notice. It should be compulsory that a high-ranking official of the company, the CEO, read the Notice. The Notice should be read more than once to assure all employees can be present. If the Notice is read only once, it assures that, in an operation that is 24/7, not everyone will get the message. A one-time only reading is insufficient. The Board should order the Notice be read enough times that all workers get to enjoy and learn from the reading.

Third, the Board's recent decision in *Electrical Workers Local 357 (Desert Sun Enterprises Limited)*, 367 NLRB No. 61 (2018), effectively overrules the Board's decision in *Boeing Co.*, 365 NLRB No. 154 (2017), motion for reconsideration denied 366 NLRB No. 128 (2018). Although the majority attempts to avoid that result, see 367 NLRB No. 61, slip op. at 2 fn. 12, the footnote just highlights the inconsistency between the Board's decision in *Electrical*

Workers Local 357 and *Boeing*.

In *Electrical Workers Local 357*, the Union sent a letter of its intent to engage in a strike against a primary employer because of its failure to pay area standards to the local Building Trades Council. The Union also sent a copy to the Las Vegas Convention and Visitors Authority (LVCVA), where the work was being performed. There is no dispute that the employer named in the letter was a primary employer and the Union had the right to strike that employer. The letter did not threaten picketing but only striking "for any all jobs because of not paying area standards." See 367 NLRB No. 61, slip op. at 1 fn. 4. For some unexplained reason, the Board treated the letter as a threat to picket. A copy was sent to the public agency that was the operating authority for the convention area where the primary employer was working.

The Board found that the accurate statement was, however, inherently coercive and therefore had to be modified with language in which the Union stated that it would engage in only lawful picketing or some other undefined phraseology that "it will comply with legal limitations on common situs picketing so as to not entangle neutrals." *Id*. at 3.

The Board majority is imposing a clear double standard. The Board majority states:

> It would be unrealistic to expect neutral employers, many with little experience in arcane common-situs picketing law, to assume the union would avoid enmeshing them in the picketing.

Id. at 2.

The same is, of course, true of many employees who view employer's rules. They don't understand the "arcane" language of Board decisions. They simply read the rules and, knowing that the employer can discipline them because they are at will employees, do not engage in activity that may be covered by the rule to avoid the threat of discipline, up to and including termination.

Moreover, the Board's holding is silly at best. The so-called neutral was the Las Vegas Convention and Visitors Authority, which hosted almost 39,000, 000 visitors during 2018 and 6,280,000 convention visitors in 2018. See LVCVA, Las Vegas Visitor Statistics, Year-to-Date Summary 2018, https://www.lvcva.com/stats-and-facts/visitor-statistics/. Las Vegas is a largely

UNION town on the strip and certainly at the LVCVA. The employees of the LVCVA are represented by a union under the terms of Nevada's collective bargaining statute. See LVCVA/SEIU Local 1107, Collective Bargaining Agreement (July 1, 2013 – June 30, 2018), https://assets.simpleviewcms.com/simpleview/image/upload/v1/clients/lasvegas/SEIU_Agreement_62efcf6e-613f-439c-9a51-26e2e7bfba88.pdf**.** The LVCVA can hardly be a simpleton with "little experience in arcane, common-situs picketing law." And hopefully it has access to lawyers in Las Vegas who, if they are unable to answer the question, can read a good treatise such as "Labor Law Analysis and Advocacy" by Robert Gorman and Matthew Finkin (Juris 2013).

The majority effectively holds employers cannot understand rules and statements since they have "little experience," so they should be protected with more explicit but none-the-less ambiguous disclaimers. Yet under *Boeing*, the employer can actually implement and enforce a rule that prohibits lawful protected activity if there is a business justification. See 365 NLRB No. 154, slip op. at 3-4 (Category 1 and 2 rules). The contradiction between *Electrical Workers Local 357* and *Boeing* is so obvious that the majority in *Electrical Workers Local 357* had to hide their unsuccessful attempt to explain their position in a footnote. The footnote utterly fails and highlights the contradiction. Simply put, in the Board's view, employers are stupider and less experienced than workers and so they need to have more explicit statements made to them about the Act than workers.[1] This view is utterly ridiculous in concept.

Rules that employers impose do contain coercive language because they are ambiguous and overbroad. Workers will necessarily be coerced. In *Electrical Workers Local 357*, the

[1] Ironically, Section 8(b)(4)(ii)(B) encompasses coercion of "any person," not just the "neutral employer, the Las Vegas Convention and Visitors Authority." 367 NLRB No. 61, slip op. at 1. LVCVA is not an employer, but it is a person within the meaning of Section 8(b)(4)(ii)(B). See *Plumbers Local 298 v. Cty. of Door*, 359 U.S. 354, 358-59 (1959). It is a public entity which has non-statutory employees.

Board finds the Union's conduct unlawful while sanctioning employer rules, which are more coercive as maintained and applied to workers.[2]

In summary, *Electrical Workers Local 357* points out the inherent contradiction in the Board's treatment of employer rules and employee and Union communications. Where rules prohibit any form of protected concerted activity, whether expressly or ambiguously, they are inherently coercive, and they should be found to be unlawful, just like the Union's letter, which was facially lawful and protected by the First Amendment.

Dated: January 17, 2019

Respectfully Submitted,

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

/s/ David A. Rosenfeld
By: DAVID A. ROSENFELD

Attorneys for Petitioner COMMUNICATION WORKERS OF AMERICA, AFL-CIO

Dated: January 17, 2018

BEESON, TAYER & BODINE

/s/ Sheila K. Sexton
By: SHEILA K. SEXTON

Attorneys for Petitioner PACIFIC MEDIA WORKERS GUILD, LOCAL 39521

145794\1002211

[2] We hasten to point out the First Amendment problems inherent in the Board's rule. Those issues are not triggered in this case, and we do not address them even though employers have done so. Here, the LVCVA is a public entity, and the Union has a right to picket or threaten to picket the LVCVA even though the LVCVA is currently construed to be a person within the meaning of Section 8(b)(4)(ii)(B). See also *NLRB v. Iron Workers Local 433*, 891 F.3d 1182 (9th Cir. 2018).

PROOF OF SERVICE

I am a citizen of the United States and resident of the State of California. I am employed in the County of Alameda, State of California, in the office of a member of the bar of this Court, at whose direction this service was made. I am over the age of eighteen years and not a party to the within action.

On January 17, 2019, I served the following documents in the manner described below:

ANSWERING BRIEF TO CROSS-EXCEPTIONS OF GENERAL COUNSEL

☑ (BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from kkempler@unioncounsel.net to the email addresses set forth below.

On the following part(ies) in this action:

By E-Filing

Office of Executive Secretary (Vacant)
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20001

Office of Executive Secretary of National Labor Relations Board

Fernando J. Anzaldua
Kyler A. Scheid
Counsel for the General Counsel
National Labor Relations Board, Region 28
2600 N. Central Ave, Suite 1400
Phoenix, AZ 85004-3099
fernando.anzaldua@nlrb.gov
kyler.scheid@nlrb.gov

Attorneys for the National Labor Relations Board

Andrew R. Turnbull
Lawrence D. Levien
Esther G. Lander
James C. Crowley
Akin, Gump, Strauss, Hauer & Feld, LLP
1333 New Hampshire Avenue, N.W.
Washington, DC 20036
aturnbull@akingump.com
llevien@akingump.com
elander@akingump.com
jcrowley@akingump.com

Attorneys for Purple Communications, Inc. and its successor and Joint Employer CSDVRS, LLC d/b/a ZRVS

Sheila K. Sexton
Beeson, Tayer & Bodine
483 Ninth Street, Suite 200
Oakland, CA 94607
(510) 625-9700 General
(510) 625-8275 Fax
ssexton@beesontayer.com

Attorneys for Charging Party Pacific Media Workers Guild, CWA 39521

Martin Yost
Pacific Media Workers Guild, Local 39521,
TNG-CWA
433 Natoma Street, Suite 250
San Francisco, CA 94103
myost@mediaworkers.org

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on January 17, 2019, at Alameda, California.

/s/ Karen Kempler
Karen Kempler

145794\1002211